THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION Nos.7202 and 9570 of 2006

Dated:06.07.2006

WRIT PETITION No.7202 of 2006

Between:

B.Dayanand.

…Petitioners

and

The Branch Manager, SBI Branch, S.P.Road, Secunderabad, and another.

…Respondents

WRIT PETITION No.9570 of 2006

Between:

Tirumala Venkatagiri.

…Petitioners

and

The Branch Manager, SBI Branch, S.P.Road, Secunderabad, and others.

…Respondents

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION Nos.7202 and 9570 of 2006

COMMON ORDER:

The petitioner is W.P.No.7202 of 2006 is the owner (hereinafter called, the owner) of the premises bearing No.10-3-454, Ground Floor House No.11B/2rt, situated at Vijaynagar, Hyderabad (hereinafter referred to as the petition schedule property). The petitioner in W.P.No.9570 of 2006 is the tenant (hereinafter called, the tenant) running a cloth shop in the said premises. Both the writ petitions are filed questioning the auction notice dated 16.03.2006 issued by the respondents for selling the petition schedule property in public auction.

The owner of the premises obtained a loan for a sum of Rs.5,00,000/- from the State Bank of India, S.P.Road Branch, Secunderabad. As he committed default in payment of the amount, the respondents initiated action under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act'), by issuing a notice under sub-section (2) of Section 13 of the Act, calling upon the owner to pay the amount due to the Bank within sixty days. The amount was not paid. Therefore, the second respondent initiated action under Section 13(4) (a) of the Act to sell the petition schedule property and accordingly auction notice was issued. Aggrieved by the same, the owner as well as the tenant are before this Court.

The learned Counsel for the petitioners contend that the auction notice is illegal and in contravention of Sections 13(2) and 13(4) of the Act as well as Rule 8(2) of the Security Interest (Enforcement) Rules, 2002 (for short 'the Rules'). At the stage of admission itself, the learned Standing Counsel for the State Bank of India obtained instructions and opposed the matter.

Under the Act whenever a borrower commits default in payment

of the secured debt, the secured creditor (the Bank) is required to issue a notice calling upon the borrower to discharge the secured debt. In case, the demand in the notice under Section 13(2) of the Act is not complied with, it is open to the secured creditor to take possession of the secured assets and transfer the same by way of lease, assignment or sale. Under Rule 8(2) of the Rules, if there is noncompliance in payment of the secured debt after receiving notice under sub-section (2) of Section 13 of the Act, the Bank/secured creditor is required to publish the possession notice in two leading newspapers. A complaint is now made before this Court that though the notice under Section 13(2) of the Act was issued, which was received by the owner on 11.07.2005, as seen from the Postal Acknowledgment, the notice of possession was not published in the newspapers vitiating the action under Section 13(4)(a) of the Act i.e., conducting public auction. As this is a matter for verification, this Court directed the learned Standing Counsel to produce the necessary material. The learned Standing Counsel produced the material before this Court on 22.06.2006, which include the Postal Acknowledgment by the owner showing the receipt of the notice under Section 13(2) of the Act, and the notice of possession dated 27.10.2005 published in the newspapers. Therefore, the submission of the learned Counsel for the owner as well as the tenant cannot be countenanced. It is nextly contended that the respondents did not serve any proceedings leading to sale of the secured assets under Section 13(4)(a) of the Act. The submission is misconceived.

On a true interpretation of the provisions of Section 13 of the Act, it becomes clear that sub-sections (2) to (4) of Section 13 of the Act have to be read together. After receiving the notice under Sections 13(2), (3) and (3-A) of the Act, the borrower may make a representation raising objections regarding the details of the payment made by the borrower. If the objection is not acceptable or tenable, the secured creditor shall communicate within one week the reasons for non-acceptance of the representation. Thereafter, law does not require a separate order under Section 13(4) of the Act. A phrase in Section 13(4) of the Act “In case the borrower fails to discharge his liability in full within the period specified in sub-section (2)” would show that the moment the period of sixty days comes to close, Section 13(4) of the Act comes into action enabling the secured creditor to take possession and resort to any of the things mentioned in clause (a) of sub-section

(4) of Section 13 of the Act. Therefore, this Court holds that there is no requirement of serving proceedings under Section 13(4) of the Act.

The Writ Petitions are devoid of any merit and are accordingly dismissed. No costs.

_____

(V.V.S.RAO, J)

06.07.2006
vs